

REMARKS

Claims 1-32 are pending in the application.

Claim 26 is objected. In response, claim 26 has been amended to overcome the objection. In particular, claims 26 has been amended to recite “a format of said video sequences is one of MPEG, MPEG-1, MPEG-2 and MPEG-3.” Accordingly, applicant respectfully request the Examiner to withdraw the objection to claim 26.

Claims 1-32 stand rejected pursuant to 35 USC §103(a) as being unpatentable over Kuchinsky et al. in view of Lang et al. and further in view of Essa.

Applicant respectfully disagrees with, and explicitly traverses the examiner’s reasons for rejecting the claims.

A claimed invention is *prima facie* obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest **all** the claim limitations.

With regard to claim 1(claim 17 recites similar features), this claim recites:

A method for providing a mood based virtual photo album, said method comprising the steps of: (a) capturing a first image of a facial expression of a viewer by a camera; (b) providing the image of said facial expression to a pattern recognition module of a processor; (c) determining a mood of said viewer having an associated emotional identifier by comparing the facial expression with a plurality of previously stored images of facial expressions having an associated emotional identifier that indicates a mood of each of said plurality of previously stored images; (d) retrieving from storage a set of photos to be transmitted to said viewer based on the emotional identifier associated with the mood determined in step (c); and (e) transmitting the set of photos retrieved in step (d) to said viewer for

display in the form of an electronic photo album.

Kuchinsky, as understood by applicant, relates to a system for multimedia organization and retrieval of images by the degree of similarity, wherein a user selects one or more metadata attribute button to annotate and retrieve content. As the Office Action states, Kuchinsky does not disclose the tag identifier is an emotional identifier, where the emotional identifier is related to the viewer's mood, and the mood determined by the facial expression of the viewer on an image taken by a camera, and the image is subjected to a pattern recognition module of a processor. Furthermore, Kuchinsky fails to disclose "comparing the facial expression with a plurality of previously stored images of facial expressions having an associated emotional identifier that indicates a mood of each of said plurality of previously stored images", as is recited in base claims.

As read by applicant, Lang relates to a device to measure emotional expression of a person based on the user's facial movement. As the Office Action indicates, Lang does not teach the facial action/expression determined by analysis of a facial expression image of said viewer taken by a camera, by a pattern recognition module of a processor. Moreover, Lang fails to disclose "comparing the facial expression with a plurality of previously stored images of facial expressions having an associated emotional identifier that indicates a mood of each of said plurality of previously stored images", as is recited in base claims. Rather, Lang merely teaches how the viewer's emotional interest/mood can be measured based on the viewer's facial action.

Essa, as understood by applicant, relates to a facial expression recognition to analyze facial expression images. As the Office Action states, Essa merely states that a pattern recognition module of processor can be used to analyze facial expression images and determine a person's mood. Essa fails to disclose "comparing the facial expression with a plurality of previously stored images of facial expressions having an associated emotional identifier that indicates a mood of each of said plurality of previously stored images", as is recited in base claims.

As shown above, the present invention is not obvious in view of the cited references because, neither Kuchinsky, Lang nor Essa, individually or in combination, discloses or suggests all the elements of the present invention. Even if the devices of Kuchinsky, Lang and Essa were combined, as suggested by the Office Action, the combined device would not disclose all the elements of the invention recited in base claims and would not perform the steps disclosed.

Applicant respectfully submits that the alleged combination of references fails to provide the disclosure, suggestion, or motivation that would have made the instant claims obvious. It is respectfully submitted that the Applicant's teachings that are being used in an improper hindsight rejection as a basis for alleging that the combination provides this motivation to an artisan. The combination fails to provide any such suggestion, and the skill in the art at the time of the invention would not have gleaned anything from the combination so as to make any of the instant claims obvious.

The Court of Appeals for the Federal Circuit has stated that:

The examiner must show reasons that the skilled artisan, **confronted with the same problems** as the inventor and with no knowledge of the claimed invention, would select

the elements from the cited prior art references for combination in the manner claimed.

In Re Denis Rouffet, 47 USPQ.2d 1453, 1457-58 (Fed. Cir. 1998) (emphasis added).

The Office Action fails to meet this requirement. Nothing found in the reference cited in the Office Action addresses the **same problems** of the prior art solved by the present invention as defined in base claims. The features of base claims address the need to a novel ways to view photo albums taking into account the mood of the viewer during the viewing mode.

The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.

In re Fritch, 972 F.2d 1260, 1266, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992)

Nothing found in the cited references address such a need. The Office Action's reliance on the present inventions teaches is improper. See *In re Wertheim*, 191 USPQ 90, 102 (C.C.P.A. 1976) (Applicant's own disclosures cannot be used to support a rejection of the claims absent some admission that matter disclosed in the specification is in the prior art.).

In addition, the Federal Circuit has also stated:

... rejecting patents solely by finding **prior art corollaries** for the claimed elements would permit an examiner to use the claimed invention itself as a **blueprint** for piecing together elements in the prior art to defeat the patentability of the claimed invention.

See *In Re Denis Rouffet*.

In the present situation, the Office Action appears to be using the claimed invention as a blueprint, which is improper. In particular, the Office Action has merely located references that may have use similar elements and has taken those terms out of context in attempt to piece together various elements using the present claims as a blueprint. This approach was specifically rejected in *Ex parte Clapp*, 227 USPQ 972, 973 (B.P.A.I. 1985):

In the instant application, the examiner has done little more than cite references to show that one or more elements or subcombinations thereof, when each is viewed in a vacuum, is known. The claimed invention, however, is clearly directed to a combination of elements. That is to say, appellant does not claim that he has invented one or more new elements but has presented claims to a new combination of elements. To support the conclusion that the claimed combination is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed combination or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.

In order to establish a *prima facie* case of obviousness, the rationale to modify or combine the prior art must be expressly or impliedly contained in the prior art or reasoned from knowledge generally available to a person of ordinary skill in the art (*In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Applicant respectfully submits that such rationale is not present in the teachings of the references and thus the claims would not have been obvious to a person of ordinary skill in the art at the time of invention.

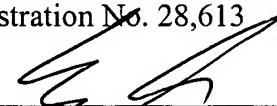
In the present case, it is respectfully submitted that the teachings of the combination of references do not overcome the standard of establishing obviousness as exemplified in *Fritch*.

Accordingly, it is respectfully submitted that the rejection of claims 1-35 should be withdrawn.

For all the foregoing reasons, it is respectfully submitted that all the present claims are patentable in view of the cited references. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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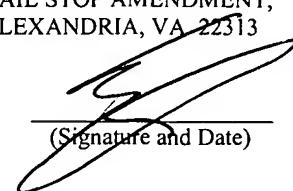
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